

(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

DATE: MAR 04 2015

OFFICE: NEBRASKA SERVICE CENTER

FILE:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will sustain the appeal, withdrawing the director's decision and approving the petition.

The petitioner describes itself as a design and prototype services company. It seeks to permanently employ the beneficiary in the United States as a senior mechanical engineer. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possesses the education and experience required by the terms of the labor certification and the requested preference classification.

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).¹ The priority date of the petition is August 2, 2012.²

Part H of the labor certification states that the offered position has the following requirements:

- H.4. Education: Master's degree in mechanical engineering.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: Bachelor's degree and five years of experience.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 60 months of experience in "product design."
- H.14. Specific skills or other requirements: None.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.³ We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.⁴

¹ See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

² The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

³ See 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule"); *Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 D.3d 683 (9th Cir. 2003) (noting that we may deny a petition even if the director omits the additional grounds for denial in the initial decision).

⁴ The instructions to Form I-290B, Notice of Appeal or Motion, allow for the submission of evidence on appeal. 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations). The record provides no reason to preclude consideration of the documents submitted on appeal. Cf. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The regulation at 8 C.F.R. § 204.5(k)(2) defines the term “advanced degree” as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. ...

A “profession” is defined as “one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.” 8 C.F.R. § 204.5(k)(2). The occupations listed at section 101(a)(32) of the Act are “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

In order to document the beneficiary’s degree, a petition for an advanced degree professional must include an “official academic record” documenting: (a) the beneficiary’s United States advanced degree or foreign equivalent degree.; or, the beneficiary’s United States baccalaureate degree, or foreign equivalent degree. 8 C.F.R. §§ 204.5(k)(3)(i)(A), (B) (also requiring evidence of the beneficiary’s five years of progressive post-baccalaureate experience in the specialty). In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See Id.* at (4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. The petitioner must also demonstrate that the beneficiary meets the terms of the approved labor certification.

The director determined that the petitioner did not establish that the beneficiary had the required education and experience to meet the terms of the labor certification, and denied the petition.

The beneficiary has a Bachelor of Science degree in Engineering issued in June 2005 and a Master of Science degree in Engineering issued in June 2007 by the Department of Mechanical Engineering at [REDACTED] Taiwan, People’s Republic of China. An evaluation in the record from [REDACTED] dated September 17, 2010, states its opinion that the beneficiary attained the equivalent of a Master’s Degree in mechanical engineering from an accredited institution of higher education in the United States. The Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), confirms the evaluator’s conclusion.

After reviewing the evidence in the record, including evidence submitted on appeal and in response to our Requests for Evidence (RFE), we conclude that the petitioner established that the beneficiary possessed at least a U.S. academic or professional degree, or a foreign equivalent degree, above a

baccalaureate. Therefore, the beneficiary qualifies for classification as an advanced degree professional under section 203(b)(2) of the Act.

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. §§ 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The evidence submitted, including in response to our RFEs, demonstrates that the petitioner established that the beneficiary possesses the education and/or experience as required by the terms of the labor certification. Therefore, the beneficiary meets the terms of the labor certification and qualifies for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is withdrawn.

We additionally find that the petitioner has established that is has the continuing ability to pay the proffered wage as of the priority date. *See* 8 C.F.R. § 204.5(g)(2).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met and the appeal is sustained.

ORDER: The appeal is sustained, and the petition is approved.